

SENATE BILL 642

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CF HB 1163

By: **Senators Kelley, Hayes, Lee, and West**
Introduced and read first time: February 3, 2020
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 9, 2020

CHAPTER _____

1 AN ACT concerning

2 **Home- and Community-Based Waiver Services - ~~Alterations and~~ Study and**
3 **Task Force**

4 FOR the purpose of ~~altering the required contents of a certain waiver submitted by the~~
5 ~~Maryland Department of Health to the Centers for Medicare and Medicaid Services;~~
6 ~~requiring the Department to send monthly letters to individuals who are eligible or~~
7 ~~likely to be eligible for certain waiver participation; requiring that certain letters be~~
8 ~~sent in a certain quantity; requiring the Department to ensure that certain~~
9 ~~individuals receive certain services within a certain period of time after the~~
10 ~~Department makes a certain determination; requiring the Maryland Department of~~
11 ~~Health to conduct a certain study; requiring the Department to report its findings~~
12 ~~and recommendations to the Governor and the General Assembly on or before a~~
13 ~~certain date; establishing the Task Force on Home- and Community-Based Waiver~~
14 ~~Services; providing for the composition, chair, and staffing of the Task Force;~~
15 ~~prohibiting a member of the Task Force from receiving certain compensation, but~~
16 ~~authorizing the reimbursement of certain expenses; requiring the Task Force to~~
17 ~~study and make recommendations regarding certain matters; requiring the Task~~
18 ~~Force to report its findings and recommendations to the Governor and the General~~
19 ~~Assembly on or before a certain date; ~~defining a certain term;~~ providing for the~~
20 ~~termination of certain provisions of this Act; and generally relating to home- and~~
21 ~~community-based waiver services.~~

22 ~~BY repealing and reenacting, with amendments,~~
23 ~~Article - Health - General~~
24 ~~Section 15-132~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



~~Annotated Code of Maryland~~
~~(2010 Replacement Volume)~~

Preamble

WHEREAS, In enacting the Americans with Disabilities Act of 1990 (ADA), Congress both described the isolation and segregation of individuals with disabilities in institutions as a serious and pervasive form of discrimination and intended for the ADA's integration mandate to be interpreted in a manner that ensures that all individuals with disabilities who are eligible for institutional placement are able to exercise a right to receive long-term services and supports; and

WHEREAS, The holdings of the United States Supreme Court in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999) and in companion cases have clearly articulated that unjustified segregation of individuals with disabilities of all ages constitutes discrimination in violation of Title II of the ADA and that individuals with disabilities of all ages have a protected civil right to receive state-funded long-term services and supports in the community rather than in institutions; and

WHEREAS, Section 7-132 of the Human Services Article requires that the State Disabilities Plan provide for the coordination of support services that ensure compliance with the federal ADA and other relevant federal and State provisions intended to protect the civil rights of individuals with disabilities of all ages and that are necessary for individuals with disabilities to achieve maximum participation in the mainstream of the community in the most integrated setting possible; and

WHEREAS, The United States Department of Justice, the federal agency responsible for interpreting and enforcing the ADA, has stated repeatedly that both the ADA and the *Olmstead* decision extend to individuals at serious risk of institutionalization, even when the risk is not imminent; and

WHEREAS, Current State policy effectively requires eligible individuals with disabilities of all ages to be segregated in institutions as a condition precedent in order to receive long-term services and supports in the community; and

WHEREAS, As a result of current State policy, eligible individuals with disabilities of all ages who live in the community and are in need of long-term services and supports find themselves at serious risk for institutional placement as a result of being denied long-term services and supports in the community; and

WHEREAS, The continuing existence of unfair and unnecessary institutionalization denies individuals with disabilities of all ages the opportunity to live and participate on an equal basis in the community and costs the State millions of dollars in unnecessary spending related to perpetuation of dependency and unnecessary confinement; and

1 WHEREAS, The State continues to approach decisions regarding long-term services
2 and supports from social welfare and budgetary perspectives, but the purpose of the ADA
3 requires the State to approach these decisions from a civil rights perspective; and

4 WHEREAS, The lack of adequate community-based long-term services and
5 supports in the State has imperiled the civil rights of individuals with disabilities of all
6 ages and has undermined the very purpose of the ADA; now, therefore,

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
8 That ~~the Laws of Maryland read as follows:~~

9 ~~Article — Health — General~~

10 ~~15-132.~~

11 ~~(a) (1) In this section the following terms have the meanings indicated.~~

12 ~~(2) “Assisted living program” has the meaning stated in § 19-1801 of this~~
13 ~~article.~~

14 ~~(3) “Assisted living services” means services provided by an assisted living~~
15 ~~program as defined in regulations adopted by the Department.~~

16 ~~(4) “Case management services” means services that assist waiver eligible~~
17 ~~individuals in gaining access to needed waiver services and other needed medical, social,~~
18 ~~housing, and other supportive services.~~

19 ~~(5) “COMMUNITY-BASED LONG-TERM SERVICES AND SUPPORTS”~~
20 ~~MEANS LONG-TERM SERVICES AND SUPPORTS, AS DEFINED IN § 10-1001 OF THE~~
21 ~~HUMAN SERVICES ARTICLE, THAT SERVE INDIVIDUALS IN THE INDIVIDUALS’~~
22 ~~HOMES AND COMMUNITIES AND NOT IN AN INSTITUTION.~~

23 ~~[(5)] (6) “Health related care and services” includes:~~

24 ~~(i) 24-hour supervision and observation by a licensed care provider;~~

25 ~~(ii) Medication administration;~~

26 ~~(iii) Inhalation therapy;~~

27 ~~(iv) Bladder and catheter management;~~

28 ~~(v) Assistance with suctioning; or~~

29 ~~(vi) Assistance with treatment of skin disorders and dressings.~~

1 ~~[(6)] (7)~~ “~~Home health care services~~” means those services defined in §
2 ~~19-401 of this article and in 42 C.F.R. 440.70.~~

3 ~~[(7)] (8)~~ “~~Medically and functionally impaired~~” means an individual who
4 ~~is assessed by the Department to require services provided by a nursing facility as defined~~
5 ~~in this section, and who, but for the receipt of these services, would require admission to a~~
6 ~~nursing facility within 30 days.~~

7 ~~[(8)] (9)~~ “~~Nursing facility~~” means a facility that provides skilled nursing
8 ~~care and related services, rehabilitation services, and health related care and services~~
9 ~~above the level of room and board needed on a regular basis in accordance with § 1919 of~~
10 ~~the federal Social Security Act.~~

11 ~~[(9)] (10)~~ “~~Waiver~~” means a home and community based services waiver
12 ~~under § 1915(e) of the federal Social Security Act, submitted by the Department to the~~
13 ~~Centers for Medicare and Medicaid Services.~~

14 ~~[(10)] (11)~~ “~~Waiver services~~” means the services covered under an approved
15 ~~waiver that:~~

16 ~~(i)~~ ~~Are needed and chosen by an eligible waiver participant as an~~
17 ~~alternative to admission to or continued stay in a nursing facility;~~

18 ~~(ii)~~ ~~Are part of a plan of service approved by the program;~~

19 ~~(iii)~~ ~~Assure the waiver participant’s health and safety in the~~
20 ~~community; and~~

21 ~~(iv)~~ ~~Cost no more per capita to receive services in the community~~
22 ~~than in a nursing facility.~~

23 ~~(b) (1)~~ ~~If permitted by the Centers for Medicare and Medicaid Services, an~~
24 ~~individual shall be determined medically eligible to receive services if the individual~~
25 ~~requires:~~

26 ~~(i)~~ ~~Skilled nursing care or other related services;~~

27 ~~(ii)~~ ~~Rehabilitation services; or~~

28 ~~(iii)~~ ~~Health related services above the level of room and board that~~
29 ~~are available only through nursing facilities, including individuals who because of severe~~
30 ~~cognitive impairments or other conditions:~~

31 ~~1. A.~~ ~~Are currently unable to perform at least two~~
32 ~~activities of daily living without hands-on assistance or standby assistance from another~~
33 ~~individual; and~~

1 ~~B. Have been or will be unable to perform at least two~~
2 ~~activities of daily living for a period of at least 90 days due to a loss of functional capacity;~~
3 ~~or~~

4 ~~2. Need substantial supervision for protection against~~
5 ~~threats to health and safety due to severe cognitive impairment.~~

6 ~~(2) The Department shall adopt regulations to carry out the provisions of~~
7 ~~this subsection.~~

8 ~~(e) The Department's waiver shall include the following:~~

9 ~~(1) [An initial] A cap on waiver participation [at] OF NOT FEWER THAN~~
10 ~~7,500 individuals;~~

11 ~~(2) [A limit on annual waiver participation based on State General Fund~~
12 ~~support as provided in the budget bill] A PLAN FOR WAIVER PARTICIPATION OF NOT~~
13 ~~FEWER THAN 7,500 INDIVIDUALS;~~

14 ~~(3) Financial eligibility criteria which include:~~

15 ~~(i) The current federal and State medical assistance long-term care~~
16 ~~rules for using services provided by a nursing facility, per §§ 1902, 1919, and 1924 of the~~
17 ~~federal Social Security Act, and applicable regulations adopted by the Department;~~

18 ~~(ii) Medically needy individuals using services provided by a nursing~~
19 ~~facility under the current federal and State medical assistance eligibility criteria governed~~
20 ~~by regulations adopted by the Department and § 1919 of the federal Social Security Act;~~
21 ~~and~~

22 ~~(iii) Categorically needy individuals with income up to 300% of the~~
23 ~~applicable payment rate for supplemental security income;~~

24 ~~(4) Waiver services that include at least the following:~~

25 ~~(i) Assisted living services;~~

26 ~~(ii) Case management services;~~

27 ~~(iii) Family training;~~

28 ~~(iv) Dietitian and nutritionist services;~~

29 ~~(v) Medical day care services; and~~

30 ~~(vi) Senior center plus services;~~

~~(5) The opportunity to provide eligible individuals with waiver services under this section as soon as they are available without waiting for placement slots to open in the next fiscal year;~~

~~(6) An increase in participant satisfaction;~~

~~(7) The forestalling of functional decline;~~

~~(8) A reduction in Medicaid expenditures by reducing utilization of services; and~~

~~(9) The enhancement of compliance with the decision of the United States Supreme Court in the case of Olmstead v. L.C. (1999) by offering cost effective community-based services in the most appropriate setting.~~

~~(d) This section may not be construed to affect, interfere with, or interrupt any services reimbursed through the Program under this title.~~

~~(e) (1) (i) THE DEPARTMENT SHALL SEND MONTHLY WAIVER NOTICE LETTERS TO INDIVIDUALS WHO ARE ELIGIBLE OR LIKELY TO BE ELIGIBLE FOR WAIVER PARTICIPATION.~~

~~(ii) WAIVER LETTERS SENT UNDER THIS PARAGRAPH SHALL BE SENT IN SUFFICIENT QUANTITY TO ALLOW FOR AT LEAST 7,500 INDIVIDUALS TO PARTICIPATE IN THE WAIVER EACH FISCAL YEAR.~~

~~(2) If a person determined to be eligible to receive waiver services under this section desires to receive waiver services and an appropriate placement is available, the Department shall [authorize]:~~

~~(i) AUTHORIZE the placement; AND~~

~~(ii) ENSURE THAT THE INDIVIDUAL RECEIVES WAIVER SERVICES WITHIN 30 DAYS AFTER THE DETERMINATION OF ELIGIBILITY WAS MADE.~~

~~(f) The Department, in consultation with representatives of the affected industry and advocates for waiver candidates, and with the approval of the Department of Aging, shall adopt regulations to implement this section.~~

(a) The Maryland Department of Health shall, in consultation with the Hilltop Institute at the University of Maryland, Baltimore County, conduct a study that provides a cost-benefit analysis of expanding access to long-term care services through home- and community-based waivers.

(b) The study shall include:

1 (1) a comparison of all health care costs incurred by individuals by different
2 levels of acuity who have moved into waiver services and those who remain on the waiting
3 list for waiver services;

4 (2) to the extent practicable, comparison data for a 5-year period;

5 (3) how to capture savings from the provision of waiver services through
6 the Maryland Medical Assistance Program that accrues to Medicare for the benefit of the
7 Maryland Medical Assistance Program;

8 (4) the extent to which the provider community can accommodate
9 additional individuals served through waiver and similar Maryland Medical Assistance
10 Program services; and

11 (5) any other information that is necessary to adequately capture the full
12 extent of incurred cost and cost avoidance from more fully using waiver services.

13 (c) On or before December 1, 2020, the Department shall report its findings and
14 any recommendations to the Governor and, in accordance with § 2-1257 of the State
15 Government Article, the General Assembly.

16 SECTION 2. AND BE IT FURTHER ENACTED, That:

17 (a) There is a Task Force on Home- and Community-Based Waiver Services.

18 (b) The Task Force consists of the following members:

19 (1) two members of the Senate of Maryland, appointed by the President of
20 the Senate:

21 (i) one of whom is a member of the Budget and Taxation Committee;
22 and

23 (ii) one of whom is a member of the Finance Committee;

24 (2) two members of the House of Delegates, appointed by the Speaker of
25 the House:

26 (i) one of whom is a member of the Appropriations Committee; and

27 (ii) one of whom is a member of the Health and Government
28 Operations Committee;

29 (3) the Secretary of Health, or the Secretary's designee; and

30 (4) the following members, appointed jointly by the President of the Senate
31 and the Speaker of the House:

- 1 (i) three representatives of the Elder Law and Disability Rights
2 Section of the Maryland State Bar Association;
- 3 (ii) one medical professional with expertise and experience in
4 geriatrics;
- 5 (iii) one representative of the Greater Maryland Chapter of the
6 Alzheimer's Association;
- 7 (iv) one representative of AARP Maryland;
- 8 (v) two representatives from community-based organizations
9 focused on disabilities and senior citizens;
- 10 (vi) one representative of nursing homes in the State;
- 11 (vii) one representative of a local area agency on aging;
- 12 (viii) one member with academic or research expertise that includes
13 the economics of providing long-term services and supports; and
- 14 (ix) three representatives of individuals who have received or are
15 receiving services through the home- and community-based services waiver under § 1915
16 of the federal Social Security Act.
- 17 (c) The President of the Senate and the Speaker of the House jointly shall
18 designate the chair of the Task Force.
- 19 (d) The Department of Legislative Services shall provide staff for the Task Force.
- 20 (e) A member of the Task Force:
- 21 (1) may not receive compensation as a member of the Task Force; but
- 22 (2) is entitled to reimbursement for expenses under the Standard State
23 Travel Regulations, as provided in the State budget.
- 24 (f) The Task Force shall study and make recommendations regarding:
- 25 (1) the modernization of the policies of the Maryland Department of Health
26 to reflect the State's goal to ensure the delivery of care in the most appropriate setting;
- 27 (2) the use of State policies and payment mechanisms to:
- 28 (i) support community-based models of care;

1 (ii) improve transparency and efficiency in providing services under
2 the home- and community-based services waiver under § 1915 of the federal Social
3 Security Act; and

4 (iii) eliminate the waiting list for services provided under the
5 home- and community-based services waiver under § 1915 of the federal Social Security
6 Act; and

7 (3) programs that the Maryland Medical Assistance Program could
8 implement to serve the population in need of home- and community-based services.

9 (g) On or before December 1, 2020, the Task Force shall report its findings and
10 recommendations to the Governor and, in accordance with § 2-1257 of the State
11 Government Article, the General Assembly.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
13 1, 2020. Section 2 shall remain effective for a period of 1 year and, at the end of June 30,
14 2021, Section 2 of this Act, with no further action required by the General Assembly, shall
15 be abrogated and of no further force and effect.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.